

SUMMARY OF THE CHILD PROTECTION ACT OF 2006

September 29, 2005

	Proposed Legislative Change	Existing NH Law	Source
1.	<ul style="list-style-type: none"> Requiring all offenders to provide description of their car, registration, license plate, and any changes to their vehicle information; this information will only be available to law enforcement and will not be listed on the public list 	<ul style="list-style-type: none"> Not required under current RSAs 	<ul style="list-style-type: none"> Jessica's Law¹ (Fla. St. §775.21(8)(a)(1))
2.	<ul style="list-style-type: none"> Requiring offenders to register every six months 	<ul style="list-style-type: none"> Offender is required to register annually (RSA 651-B:4) 	<ul style="list-style-type: none"> Jessica's Law (Fla. St. § 775.21(8)(a))
3.	<ul style="list-style-type: none"> Making it a Class B felony (3 ½ to 7 years in prison) for anyone who interferes with registration or conceals an offender with the purpose to hinder registration process 	<ul style="list-style-type: none"> Not currently covered by NH RSAs 	<ul style="list-style-type: none"> Jessica's Law (Fl. St. § 775.21(10)(g))
4.	<ul style="list-style-type: none"> Making it a Class B felony (3 ½ to 7 years in prison) for providing false information on the registration 	<ul style="list-style-type: none"> Not currently covered by NH RSAs 	<ul style="list-style-type: none"> Jessica's Law (Fla. St. § 775.21(10)(a)) (providing that all failures to properly register are a felony in the third degree (term of imprisonment not to exceed 5 years))
5.	<ul style="list-style-type: none"> Enabling a prosecutor to elect to seek a mandatory minimum sentence of 25 to life for aggravated felonious sexual assault ("AFSA") (RSA 632-A:2, I(l); RSA 632-A:2, II) where victim is under 13 and the defendant is 18 years of age or older for first time offense plus mandatory life-time supervision 	<ul style="list-style-type: none"> Currently RSA 632-A:2, I(l); RSA 632-A:2, II carry a <i>maximum</i> sentence of 10-20 years with no mandatory sentence. The sentencing court <i>may</i>, but is not 	<ul style="list-style-type: none"> Jessica's Law (Fla. St. § 775.082(3)(a)(4)) imposes a mandatory minimum sentence of 25 years, as well as a mandatory life-time electronic

¹ "Jessica's Law" refers to legislative changed enacted by The Jessica Lunsford Act, Florida House Bill 1877, effective September 1, 2005. It does not refer to legislation that existed in Florida prior to the enactment of Jessica's Law. Jessica's Law applies to children under the age of 12. The Child Protection Act would cover sexual crimes against children under the age of 13.

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		required to, sentence an offender to life-time supervision. <i>See</i> RSA 632-A:10-a, I; RSA 632-A:10-a, V.	supervision
6.	<ul style="list-style-type: none"> Requiring Department of Corrections to study the feasibility and efficacy of monitoring sex offenders by global positioning satellite technology and submit recommendations and proposals to the Legislature by the next legislative session. The Department of Corrections shall implement a GPS monitoring system by July 1, 2008. 	<ul style="list-style-type: none"> not covered by current NH law 	<ul style="list-style-type: none"> Jessica's Law (Fla. St. § 775.082(3)(a)(4)) (requires mandatory life-time <i>electronic</i> GPS supervision)
7.	<ul style="list-style-type: none"> Enabling a prosecutor to elect to seek a mandatory life without parole if the defendant has previously been incarcerated or subject to a sentence of probation, parole, or other supervised release for an offense in violation of RSA 632-A:2, I(<i>l</i>) or RSA 632-A:2, II, or if the defendant commits AFSA against a victim under the age of 13 while he is on released on bail, or subject to probation, parole, other supervised release or while in escape status for AFSA on a victim under the age of 13 	<ul style="list-style-type: none"> Current law provides that if the defendant has more than one conviction for AFSA the court <i>may</i> impose a sentence up to 20-40 years. RSA 632-A:10-a, II. (The separation convictions must be the result of separate criminal episodes but the convictions can occur during one adjudication. <u>See Petition of State of NH</u>, 152 N.H. 185 (2005)). Current law provides that if a defendant has been previously 	<ul style="list-style-type: none"> Not Covered by Jessica's Law Pre-existing Florida law provides prosecutor with discretion to seek mandatory life without parole, but this Florida law is not limited to sexual offenses against children but several different types of repeat offenders, moreover the new offense must be committed within 3 years of release from the prior sentence. Fla. St. § 775.082(9)

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		<p>convicted of 2 or more offenses under RSA 632-A:2 the court must sentence him to a mandatory term of life without parole (The first two convictions must have occurred in an earlier, separate proceeding based on separate criminal episodes. <u>Petition of State of NH</u>, 152 N.H. 185 (2005)).</p> <ul style="list-style-type: none">• Current law also provides that a court <i>may</i> impose a sentence of life without parole if has two convictions from separate criminal episodes of AFSA against a victim under 13. RSA 651:6, III(e).• Current law also provides that a court <i>may</i> impose a minimum sentence of 15 years and a maximum sentence of life without parole for a defendant convicted of a second, subsequent offense of sexual penetration of a	

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		<p>child under the age of 13. RSA 651:6, III(g)</p> <ul style="list-style-type: none"> Current law also provides that a court <i>may</i> impose a sentence of up to life in prison for a third FSA offense. RSA 651:6, III(f). 	
8.	<ul style="list-style-type: none"> Enabling a prosecutor to elect to seek a mandatory minimum sentence of 25 years to life if a defendant purposely, knowingly, or recklessly with extreme indifference to the value of human life assaults a child and causes serious bodily injury that is likely to be permanent 	<ul style="list-style-type: none"> Current law provides a maximum sentence of 10-30 years for assault on a child under 13 years of age. RSA 651:6, I(e), III(a) 	<ul style="list-style-type: none"> Not Covered by Jessica's Law U.S. House Bill HR 3132, The Prevention and Deterrence of Crimes Against Children Act of 2005 § 302 (proposing a mandatory minimum sentence of 20 years when the crime of violence results in bodily injury to a child)
9.	<ul style="list-style-type: none"> Enabling a prosecutor to elect to seek a mandatory minimum sentence of 35 years to life if a defendant commits second degree murder against a child under the age of 13 	<ul style="list-style-type: none"> Current law provides for a sentence of up to life in prison for second degree murder with no mandatory minimum. RSA 630:1-b, II. 	<ul style="list-style-type: none"> Not Covered by Jessica's Law
10.	<ul style="list-style-type: none"> Enabling a prosecutor to elect to seek a mandatory minimum sentence of life without parole if a defendant is convicted of assaulting and causing serious bodily injury that is likely to be permanent or commits second degree murder against a child 	<ul style="list-style-type: none"> Current law provides a maximum sentence of 10-30 years for assault on a child under 13 years of age. RSA 651:6, I(e), 	<ul style="list-style-type: none"> Not Covered by Jessica's Law

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	under the age of 13 where the defendant has previously been convicted of such an offense	III(a)	
11.	<ul style="list-style-type: none"> No bail pending trial for all crimes carrying a sentence of up to life where the proof is evident and presumption is great 	<ul style="list-style-type: none"> Current law allows for bail pending trial for all charges except capital and first degree murder. RSA 597:1-c (requiring that “proof is evident or the presumption great”) 	<ul style="list-style-type: none"> Not Covered by Jessica’s Law Pre-existing Florida law provides for no bail pending trial for anyone charged with a felony punishable by life in prison where proof is evidence or presumption great. Fla. R. Crim. P. 3.131(a). Also, Fl. St. § 948.06(4), which is part of Jessica’s Law, prohibits a registered sex offender who has violated probation or parole to be released unless the court makes a specific finding that the person is not a danger to the public
12.	<ul style="list-style-type: none"> Increasing penalty for negligent failure to register to a misdemeanor (up to 12 months in the house of corrections and a \$1200 fine) 	<ul style="list-style-type: none"> Currently a violation level offense (non-criminal offense with a maximum penalty of \$1000 fine). RSA 651-B:9, I. 	<ul style="list-style-type: none"> Jessica’s Law does not distinguish between negligent and knowing failure to register. All failures to register are a felony in the third degree (term of imprisonment not

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			to exceed 5 years) Fla. St. § 775.21(10)(a)
13.	<ul style="list-style-type: none"> Increasing penalty for knowing failure to a Class B felony (up to 3 ½ to 7 years in the state prison and a \$4000 fine) 	<ul style="list-style-type: none"> Currently a misdemeanor (up to 12 months in the house of corrections and a \$1200 fine). RSA 651-B:9, II 	<ul style="list-style-type: none"> Jessica's Law does not distinguish between negligent and knowing failure to register. All failures to register are a felony in the third degree (term of imprisonment not to exceed 5 years) Fla. St. § 775.21(10)(a)
14.	<ul style="list-style-type: none"> Increasing penalty for repeated knowing failure to register to a Class A felony (up to 7 ½ to 15 years in the state prison and a \$4000 fine) 	<ul style="list-style-type: none"> Currently a Class B felony (up to 3 ½ to 7 years in the state prison and a \$4000 fine). RSA 651-B:9, III 	<ul style="list-style-type: none"> Jessica's Law does not distinguish between negligent and knowing failure to register. All failures to register are a felony in the third degree (term of imprisonment not to exceed 5 years) Fla. St. § 775.21(10)(a)
15.	<ul style="list-style-type: none"> Obligating an offender, who is required to register for 10 years and who is convicted of knowingly failing to register, to register for an additional 10 years from the date of conviction for a first offense. If the offender, who is required to register for 10 years, is convicted of a second offense of knowingly failing to register, the offender would be obligated to register for life. 	<ul style="list-style-type: none"> Not currently covered by NH RSAs 	<ul style="list-style-type: none"> Not Covered by Jessica's Law Gap in current NH law allows an offender who evades registration for 10 years to not have to register at all if the registration period expires
16.	<ul style="list-style-type: none"> Enabling towns to prohibit 	<ul style="list-style-type: none"> Not currently 	<ul style="list-style-type: none"> Not Covered by

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	offenders on the public list from moving to a residence within 1000 feet of a school, daycare facility, or park where children regularly gather	covered by NH RSAs	<p>Jessica's Law</p> <ul style="list-style-type: none"> • Pre-existing Florida law requires law enforcement specifically to notify day care facilities and schools within 1 mile of a sex offender of the sex offender's presence within 48 hours after the police receive information. Fla. St. § 775.21(7). • Several states have adopted residency restrictions, including California (1000 feet while on probation or parole, no residency restriction after that); Iowa (2000 feet); and Tennessee (1000 feet)
17.	<ul style="list-style-type: none"> • Providing for civil commitment of sexual offenders who have been convicted, found not guilty by reason of insanity, or incompetent to stand trial on a sexually violent offense and who have a mental abnormality that makes it difficult for the offender to control his sexual behavior and the person poses a danger to the public 	<ul style="list-style-type: none"> • Not currently covered by NH RSAs 	<ul style="list-style-type: none"> • Not Covered by Jessica's Law • Covered by pre-existing Florida statutes (Fla. St. § 394.910 <i>et seq.</i>) • At least 20 states have civil commitment statutes for sexual predators

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18.	<ul style="list-style-type: none"> Requiring in-state offenders to notify local law enforcement of any changes to their work address 	<ul style="list-style-type: none"> Out-of-state offenders are already required to report changes to employment; in-state offenders are not required to report changes in employment 	<ul style="list-style-type: none"> Not Covered by Jessica's Law Proposal is based on a gap in current NH RSAs
19.	<ul style="list-style-type: none"> Requiring offenders to register with local law enforcement agency within 5 business days of conviction, release from incarceration or moving to New Hampshire from another state 	<ul style="list-style-type: none"> Offender is required to register within 30 days of release (RSA 651-B:4, I(a)(1)) 	<ul style="list-style-type: none"> Not Covered by Jessica's Law Preexisting Florida law requires a person to register within 48 hours of release into community with local DMV office and requires offender to get a license or other picture ID. Fl. St. § 775.21(6)(f) The time provided for an offender to register varies between 24 hours and 14 days in other states Proposed federal legislation requires registration within 5 days of release. HR 3132, The Children's Safety Act of 2005 § 113
20.	<ul style="list-style-type: none"> Providing discretion for a sentencing judge to order that the person register as a sex offender and/or be listed on the public list if the facts and circumstances 	<ul style="list-style-type: none"> Not currently covered by NH RSAs 	<ul style="list-style-type: none"> Not Covered by Jessica's Law Other states have similar provisions, including: Arizona

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	support a finding by clear and convincing evidence that the crime was motivated by sexual gratification or sexual compulsion and protection of children would be furthered by requiring the person to register even if an offense is not specifically listed on the list of offenses covered by RSA 651-B. Any such sentence requiring a person to be listed on the public list shall require the listing for a period of not less than 10 years and up to life		Code § 13-3821(C); Connecticut Code § 54-254; Calif. Penal Code § 290(a)(2)(E); North Dakota Code § 12.1-32-15; W.Va. Code § 15-12-2(c)
21.	<ul style="list-style-type: none"> Requiring Department of Safety to verify address by sending a letter (non-forwarding certified mail) to address and requiring offender to send response. If offender only has PO Box, requiring DOS to physically visit the home or develop some other method of verifying the offender's address 	<ul style="list-style-type: none"> Currently authenticity of address is based only on self-reporting by offender 	<ul style="list-style-type: none"> Not Covered by Jessica's Law Pre-existing Florida law requires address verification in a manner determined by the Department of Corrections. Fla. St. § 775.21(8). Arkansas, Maine, Maryland, Mississippi, Montana, Nebraska, NY, and other states provide for address verification in this manner
22.	<ul style="list-style-type: none"> Imposing an annual fee on offenders at the time of registration to defray cost of maintaining the registration list 	<ul style="list-style-type: none"> Not covered by current NH RSAs 	<ul style="list-style-type: none"> Not Covered by Jessica's Law Maine, Massachusetts, Michigan, and other states require annual fees between \$25

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			and \$75
23.	<ul style="list-style-type: none"> Permitting the district court at the time of the dispositional hearing to require juvenile delinquents to register as a sexual offender until the juvenile reaches the age of 17 (or 21 if the district court exercises extended jurisdiction over the juvenile). A juvenile offender would not be listed on the public list (commonly called the “Megan’s Law list”), but the police chief could share information about juvenile offenders with the principal of the school. 	<ul style="list-style-type: none"> Juvenile offenders are not currently required to register 	<ul style="list-style-type: none"> Not Covered by Jessica’s Law Based on a survey of all 50 states, approximately 28 states require juveniles to register. Registration requirements vary widely. Public disclosure of juvenile offender information also varies widely in states that require juveniles to register.
24.	<ul style="list-style-type: none"> Expanding the list of offenses against a minor on the “Megan’s Law list” to include RSA 632-A:2, I(j) (victim is between 13 and 16 and offender is member of same household or related to victim); RSA 632-A:2, I(k) (victim is under 18 and offender uses position of authority to coerce victim). No information identifying the victim in any manner will appear on the public list. 	<ul style="list-style-type: none"> Even though these offenses involve AFSA with a minor they are not listed on the Megan’s Law list 	<ul style="list-style-type: none"> Not Covered by Jessica’s Law
25.	<ul style="list-style-type: none"> Permitting local law enforcement agencies to provide affirmative public notification of offenders living in their communities 	<ul style="list-style-type: none"> Current law implicitly allows affirmative notification but is not clear on this point. (RSA 651-B:7, I) 	<ul style="list-style-type: none"> Not Covered by Jessica’s Law Florida statutes prior to Jessica’s Law require law enforcement to notify the public of the presence of sex offenders in a municipality. Florida law also requires law

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			enforcement specifically to notify day care facilities and schools within 1 mile of a sex offender of the sex offender's presence within 48 hours after the police receive information. Fla. St. § 775.21(7)
26.	<ul style="list-style-type: none"> Providing protection for law enforcement agencies so that they will not face civil liability for providing or failing to provide public notification of sex offender information 	<ul style="list-style-type: none"> Current law provides immunity to law enforcement for "good faith conduct under this chapter." RSA 651-B:7, V. It does not explicitly provide immunity if a law enforcement agency exercises its discretion to provide affirmative notification or if the agency opts not to provide affirmative notification 	<ul style="list-style-type: none"> Not Covered by Jessica's Law Included in pre-existing Florida law. Fla. St. § 775.21(9) (does not provide immunity if law enforcement fails to provide required public notification)
27.	<ul style="list-style-type: none"> Requiring that sex offender registration information be available to law enforcement officials on motor vehicle records and criminal records checks to make it easier for law enforcement to know they are dealing with a registered offender when the police conduct a records check 	<ul style="list-style-type: none"> Currently sex offender registration information is available to law enforcement through a separate list and is not available to law enforcement 	<ul style="list-style-type: none"> Not Covered by Jessica's Law

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		automatically when they run a criminal record or motor vehicle record	
28.	<ul style="list-style-type: none">Adding a section to RSA 651-B to make it clear that the registration requirements are intended to be no less restrictive than required by federal law, including, but not limited to, the Jacob Wetterling Act, as amended	<ul style="list-style-type: none">No covered by current NH RSAs	<ul style="list-style-type: none">Not Covered by Jessica's LawPre-existing Florida law addressed this provision (Fla. St. § 775.21(6)(1); 775.21(8); 775.24)